IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-12-2006

CORAM

THE HONOURABLE MR.JUSTICE R.REGUPATHI

CRL.O.P.No.30614 of 2006
Crl.M.P.No.1 and 2 of 2006

Ranjit Pisharoty .. Petitioner.

Versus

Interpreter
Additional Chief Metropolitan Magistrate Court,
Egmore, Chennai-600 008. .. Respondent.

Prayer: Petition filed under section 482 of Cr.P.C. pleased to call for the records of the purported issue of summons by the Addl. Chief Metropolitan Court, Egmore, Madras-8, issued on 28th November 2006 directing the petitioner to appear before the said Court in CC No.7297/06 and quash the same.

For Petitioner : Prof.S.Krishnaswamy

O R D E R

An intimation has been received, signed by the interpreter of Additional Chief Metropolitan Magistrate, Egmore, Chennai-8 under the caption "Summons" to the petitioner, directing attendance of the petitioner in the Court to answer charges for an offence punishable under Sections 408, 420 r/w 120-B IPC on 18.12.2006 at 10.30 a.m.

2. Learned counsel appearing for the petitioner submits that though it has been captioned as "SUMMONS", questioned the propriety and authority of the interpreter in issuing such summons for appearance before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai-8 and sought to quash the proceedings.

3. I have perused the summons issued. It has been signed by the interpreter of the Court. Though the seal of the Additional Chief Metropolitan Magistrate Court, Egmore is affixed, I do not find the signature of the learned Magistrate anywhere in the summons.

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4. Section 61 of Cr.P.C states as follows:

61.Form of summons – Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.

5. Rule 7 of Criminal Rules of Practice, Madras reads as follows:

Accused summons to be signed by Magistrate- Magistrate shall themselves sign summons to the accused persons.

6. Section 476 Cr.P.C reads as follows:

"Subject to the power conferred by Article 227of the Constitution, the forms set forth in the Second Schedule, with such variations as the circumstances of each case required, may be used for the respective purposes therein mentioned, and if used shall be sufficient."

In the Second Schedule "Form No.1" is printed as "summons to an accused person".

7. In the present summon issued, unfortunately such procedure has not been followed and an officer of the Court viz., an interpreter with his seal and signature has signed the summons. It is erroneous, illegal and contrary to the provisions of Cr.P.C and Criminal Rules of Practice. The summons should be clear and specific in its terms as to the title of the Court, the place at which, the day and the time when, the attendance of the person summoned is required, and it should go on to say that such person is not to leave the Court without leave, and if the case, in which he has been summoned is adjourned, without ascertaining the date to which it is adjourned.

8. The Hon'ble Supreme Court while highlighting the importance of summons held as follows in a case reported in (AIR 1998 SC 128) Pepsi Foods Ltd. Vs. Special Judicial Magistrate and Others:

"Para 26 summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

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9. At any rate the person summoned must understand the purpose of the summons. In the instant case, on a perusal of the summons issued, I do not find such requirements have been followed. I am at a loss to understand why the emblem of "Tamil Nadu Police" is printed on the top of the summons above the name of the Court. It appears that this kind of irregularity happens frequently and in spite of repeated reminders by this Hon'ble High Court to the Courts of learned Magistrate, such erroneous procedures are adopted. As the learned Magistrate has not signed the summons and since the procedure has not been followed in the instant case, the impugned summon is quashed. Petition is ordered accordingly. The learned Magistrate may on application of mind may issue fresh summons in accordance with law. Consequently, connected MPs are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

csh

To

1.The Interpreter
The Additional Chief Metropolitan Magistrate,
Egmore, Chennai-600 008.

2.The Addl. Chief Metropolitan Magistrate,
Egmore, Chennai -600 008.

3.-do- thro' The Chief Metropolitan Magistrate,
Egmore, Chennai 600 008.

4.The Section officer,
'F' Section,High Court, Madras. (with xerox copy of Summons filed in this petition)
(He is requested to circulate this order to all the Magistrates Court)

MA (CO)
km/23.1.

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